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Supreme Court, U.S.
FILED
JUN 9 1986
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

STATE OF FLORIDA

Petitioner,

vs.

KEVIN KANE,

Respondent.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

AND APPENDIX

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QUESTION PRESENTED FOR REVIEW

WHETHER, IN A HABEAS CORPUS PROCEEDING CONTESTING EXTRADITION IN THE ASYLUM STATE, THE AUTHENTICATION BY THE EXECUTIVE AUTHORITY OF THE DEMANDING STATE REQUIRED BY FEDERAL LAW IS THE ONLY AUTHENTICATION NECESSARY FOR EXTRADITION.

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PREFACE

The Petitioner, the State of Florida, was the Appellee in the District Court of Appeal, Third District of Florida. The Respondent, Kevin Kane, was the Appellant in the District Court of Appeal, Third District of Florida. In this petition, the parties will be referred to as they appear before this Court.

The following reference is made in this brief:

(A) For the portions of the record below, sufficient to show jurisdiction in this Court, which are contained in the Petitioner's appendix and consist of pages A 1-25.

OPINIONS BELOW

The decision of the District Court of Appeal, Third District of Florida, was rendered on February 4, 1986. It is (not yet) reported, but is reproduced in the Petitioner's Appendix at A 1-2. Rehearing was denied on March 5, 1986. (A 3-4). The order of the state trial court denying the petition for writ of habeas corpus, rendered on October 17, 1985, is not reported but is reproduced at A 5-6.

GROUNDS UPON WHICH JURISDICTION IS INVOKED

The opinion and judgment of the District Court of Appeal, Third District of Florida, was rendered on February 4, 1986. The Petitioner's motion for rehearing and rehearing en banc, accepted as timely by the court, was denied on March 5, 1986. The jurisdiction of this Honorable Court is invoked pursuant to the specific provisions of Title 28 U.S.C. § 1257(3). This is a civil case.

FEDERAL CONSTITUTIONAL PROVISIONS AND STATUTES INVOKED

Article IV, Section 2, Clause 2, of the United States Constitution, provides as follows:

> A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

Title 18 U.S.C. § 3182 implements the above provision, and provides as follows:

> Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produced a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, testified as authentic by the governor or chief magistrate of the State or Territory to which such person has fled shall cause him to be arrested and secured, and notify

> the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear.

Florida's adoption of the Uniform Criminal Extradition Act (Section 941.01 - 941.29, Fla. Stat. 1941) includes Section 941.03 governing the Form of Demand:[1]

> § 941.03 FORM OF DEMAND
>
> No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing alleging, except in cases arising under s. 941.06, that the accused

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[1] This Florida Statute differs from its sister provision in the Uniform Act in that the word "authenticated" appears only once in the Uniform Act. The pertinent provision of the Uniform Act reads:

> No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing . . . and accompanied by a copy of an indictment found . . . and the copy of the indictment . . . must be authenticated by the executive authority making the demand.

was present at the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by an authenticated copy of an indictment found or by information supported by affidavit in the State having jurisdiction of the crime, or by a copy of the warrant supported by an affidavit made before a committing magistrate of the demanding state; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation, or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction, or sentence must be authenticated by the executive authority making the demand.

STATEMENT OF THE CASE

On September 6, 1985, the Governor of Louisiana issued a Requisition Warrant demanding the extradition of Respondent from Florida. The Requisition Warrant (or Demand), signed by the Governor of Louisiana, certified as authentic and duly authenticated in accordance with the laws of Louisiana the annexed application for requisition and copies of an information, affidavit, warrant and identification. (A 23-25). Louisiana demanded the extradition of Respondent to stand trial on the charge of attempted aggravated rape.

Annexed to the Requisition Warrant were the following documents: 1) a sworn application for requisition executed by an assistant district attorney of Terrebonne Parish; 2) a copy of an information charging Respondent with attempted aggravated rape, filed in the clerk's

office on April 26, 1985; 3) a copy of a sworn affidavit executed by the investigating officer with the Terrebonne Parish Sheriff's office detailing his involvement in the investigation of the crime; 4) a copy of a sworn affidavit executed by the Sheriff of Terrebonne Parish as to the identification of Respondent by photographs, also appearing on the affidavit; 5) a copy of a sworn affidavit executed by the Sheriff of Terrebonne Parish attesting to the attached set of fingerprints as being those of Respondent, acquired upon Respondent's arrest on September 9, 1979 for the crime of criminal mischief; 6) copies of the relevant Louisiana statutes (aggravated rape; attempt); 7) a copy of a bench warrant issued by Judge Wilmore Broussard of Terrebonne Parish directing the arrest of Respondent for the charge of attempted aggravated rape; and 8) a cross-

certification form in which a) the clerk of the Court of Terrebonne Parish, La. certified that the "foregoing 8 pages contain a full, complete, true and exact copy of the Requisition Sheet, Affidavit, Warrant, Photograph and applicable statutes concerning the extradition of Kevin Kane"; b) District Judge Gaidry certified the Clerk of the Court, and c) the Clerk of the Court certified the signature of Judge Gaidry. Additionally, the copies of the information and bench warrant contain a stamped and signed certificate by a clerk dated August 6, 1985.

The Governor of Florida issued his Rendition Warrant on September 24, 1985; Respondent was arrested in Miami and held in custody pursuant to his warrant. respondent filed a petition for writ of habeas corpus pursuant to § 941.10 Fla. Stat. (1983) in the Circuit Court in and

for Dade County, Florida. The circuit court denied Respondent's petition on October 17, 1985. (A 5-6). Respondent appealed the circuit court's denial to the District Court of Appeal, Third District of Florida.

One of the issues raised on appeal by Respondent was whether the circuit court erred in denying the petition in that the Louisiana Governor's demand was not accompanied by a properly authenticated copy of the information as required by § 941.03 Fla.Stat. (1985). Respondent's argument on this issue was based on an earlier opinion entered by the District Court (Wheaton v. State, 420 So.2d 604 (Fla. App. 1982) (A 7-16), in which it was held that § 941.03 Fla.Stat. (1985) requires a separate authentication by the appropriate person in charge of the records of the court wherein the information or

indictment is filed, in addition to the authentication made by the governor or executive authority of the demanding state. Petitioner raised the constitutional argument before the District Court that Art. IV § 2 and 18 U.S.C. § 3182 require only an authentication by the executive authority of the demanding state, and that § 941.03 Fla. Stat. (1985) could not constitutionally be construed to require more of a demanding state than is required by federal law. Nonetheless, the District Court reversed the denial of habeas relief solely upon the authority of Wheaton v. State, supra.

Petitioner filed a Motion for Rehearing and Request for Certification and Motion for Rehearing En Banc, requesting that the District Court revisit its earlier decision in Wheaton in light of the constitutional arguments. Petitioner also requested the

District Court to certify the question of law involved as a question of great public importance, to the Florida Supreme Court. The District Court denied these motions on March 5, 1986. (A 3-4).[2]

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[2] Petitioner was foreclosed from seeking further review in the Florida Supreme Court as there was no basis for invoking the discretionary jurisdiction of that court. The appellate jurisdiction of the Florida Supreme Court is limited to capital cases and decisions of district courts which declare invalid a state statute or a provision of the state constitution. Art. V § (3)(b)(1), Constitution of the State of Florida. The discretionary jurisdiction of the Florida Supreme Court is limited to those district court decisions which a) expressly declare valid a state statute; b) expressly construe a provision of the state or federal constitution; c) expressly affect a class of constitutional or state officers; d) expressly and directly conflict with a decision of another district court or the Florida Supreme Court on the same question of law; e) pass upon a question certified to be of great public importance, and f) are certified to be in direct conflict with decisions of other district courts of appeal. Id., Rule 9.030(a)(2)(A) Florida Rules of Appellate Procedure. The Florida Supreme Court denied review in Wheaton when the State of Florida sought discretionary conflict review. (A 19). Since the district court (cont'd on next page)

REASONS FOR GRANTING THE WRIT

As will be demonstrated in this petition, the issue involved presents an important question of federal law which should be definitively settled by this Court, and which impacts upon the interstate extradition procedures utilized by the forty-nine other states, and territories. The District Court of Appeal's decision is in conflict with the federal constitutional and statutory provisions governing interstate rendition, in that it requires more of a demanding state than is required under the federal law. The decision is also in conflict with early decisions of this Court and with decisions of courts of the other states.

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in the instant case refused to certify the question as requested by Petitioner, the district court was the highest court in which a decision could be obtained as a matter of right.

The decision below, based solely on another decision of the same court (Wheaton v. State, A-7) is in direct conflict with federal law, as both decisions require asylum state courts to grant writs of habeas corpus where the documents supporting the demanding state's requisition warrant have not been authenticated by a clerk or custodian of records; this requirement is in addition to the authentication made by the governor of the demanding state, which is the only authentication required by federal law. The effect of the decision below is to impose an extra requirement on demanding states seeking extradition of fugitives found within the jurisdiction of Florida. The Governor of Florida received approximately 1000 demands for the extradition of fugitives found within Florida during the year of 1983. The decision below will directly retard

rendition pursuant to the escalating number of demands made to Florida each year, contrary to the purpose of the Extradition Clause. For these reasons this Court should accept jurisdiction.

The Florida appellate court has judicially imposed an unconstitutional and extra, burdensome requirement on all states seeking the extradition of fugitives found in Florida. Proceedings for the interstate extradition of fugitives are controlled by federal law, Article IV, Section 2, Clause 2 of the United States Constitution; 18 U.S.C. § 3182; Innes v. Tobin, 240 U.S. 127 (1916); Lascelles v. Georgia, 148 U.S. 537 (1893); Kentucky v. Dennison, 65 U.S. 66 (1860). This Court has a duty to ensure that the purpose of the Extradition Clause is not frustrated by asylum states requiring more of demanding states than is required by 18 U.S.C. § 3182.

The Extradition Clause and the supplementary federal statute were intended to provide for summary executive proceedings by which states could "bring to speedy trial offenders against its laws from any part of the land." Biddinger v. Commissioner of Police, 245 U.S. 128, 133, 38 S.Ct. 42,43, 62 L.Ed. 193 (1917). By deemphasizing state boundaries and imposing the concepts of comity and full faith and credit found in other clauses of Article IV, the framers sought to ensure the smooth functioning of the criminal justice system. Michigan v. Doran, 939 U.S. 282, 99 S.Ct. 530, 58 L.Ed.2d 521 (1978). The framers also envisioned that the governors of the states would play the primary role in effectuating extradition. Id. To this end, courts have given the Clause and statute a liberal construction in order to effectuate and expedite the administration

of justice. Biddinger, supra; Appleyard v. Massachusetts, 203 U.S. 222, 27 S.Ct. 122, 51 L.Ed. 161 (1906); Lascelles v. Georgia, 148 U.S. 537, 13 S.Ct. 687, 37 L.Ed. 549 (1892); Roberts v. Reilly, 116 U.S. 80, 6 S.Ct. 291, 29 L.Ed. 544 (1885); Ex Parte Reggel, 114 U.S. 642, 5 S.Ct. 1148, 29 L.Ed. 250 (1885); Kentucky v. Dennison, 65 U.S. 66, 16 L.Ed. 717 (1860); Brewer v. Goff, 138 F.2d 710 (10th Cir. 1943).

This Court has described a state's duty to extradite as stemming from a "compact entered into with the other states when it adopted the Constitution of the United States, and became a member of the Union." Kentucky v. Dennison, 65 U.S. 66, 109. This compact makes extradition a matter of overriding federal interest and control; and especially so with respect to the degree of authentication required. Prior to the Federal Rendition Act of 1793 (Now

18 U.S.C. § 3182), extradition was hindered by states requiring different proof to authenticate the judicial proceedings upon which the demands were based. Id. at 105. As explained by this Court:

> All difficulty as to the mode of authenticating the judicial proceeding was removed by the article in the Constitution which declares "that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state; and the Congress may by general law prescribe the manner in which acts, records, and proceedings shall be proved, and the effect thereof." And without doubt the provision of which we are now speaking--that is, for the delivery of a fugitive, which requires official communications between states, and the authentication of official documents--was in the minds of the framers of the Constitution, and had its influence of inducing them to give this power to Congress. And acting upon this authority, and the clause of the Constitution which is the subject of the present controversy, Congress passed the act of 1793. . .

65 U.S. at 106. The federal statute passed

by Congress requires only that the judicial acts necessary to authorize the demand be certifed as authentic by the executive authority making the demand. 18 U.S.C. § 3182. The certificate of the executive authority is made conclusive as to the verity of the supporting documents when presented to the executive of the state where the fugitive is found. Id. "He has no right to look behind them, or to question them, or to look into the character of the crime specified in this judicial proceeding." Id. at 107. The federal statute does not specify the degree or form of authentication which must be presented to the governor of the demanding state before issuing his certificate of authenticity; it must only be evidence satisfactory in the mind of the governor of the demanding state, and asylum state courts cannot go beyond the demanding state

governor's certificate of authenticity. See, Munsey v. Clough, 196 U.S. 364, 25 S.Ct. 283 (1905). These principles are consistent with the federal scheme of extradition, as states may not enact or enforce standards in derogation of the federal rights of other states of the Union to obtain the return of persons who have violated their laws and fled from their jurisdictions.[3] As stated earlier, this

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[3] While states are free to provide for the surrender of fugitives on terms less exacting than those imposed by federal law, State of South Dakota v. Brown, 576 P.2d 473 (Cal. 1978); State ex rel Sieloff v. Golz, 258 N.W.2d 700 (Wisc. 1977); People ex rel Dimas v. Shimp, 403 N.E.2d 750 (Ill. App. 1980); states cannot impose more stringent standards or refuse a demand for extradition on the basis of requirements not articulated by federal law. 31 Am.Jur.2d Extradition, § 5; Ennist v. Baden, 28 So.2d 160 (Fla. 1946); Shapiro v. State, 456 So.2d 968 (Fla. Dist.Ct.App. 1984); State v. Cox, 306 So.2d 156 (Fla. Dist.Ct.App. 1974). See, People ex rel Hackler v. Lohman, 160 N.E.2d 792 (Ill.), cert. den., 361 U.S. 963 (1960); Ex Parte Arrington, 270 N.W.2d 39 (Mo. 1954); Ex

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Court has a duty to see that the purpose of the Extradition Clause is not frustrated by asylum states requiring more of demanding states than is required by the federal statutes, as state regulations which place burdens or impediments on extradition beyond those permitted by the federal law, whether legislatively or judicially imposed, are unconstitutional and void. See, United States ex rel Grano v. Anderson, 318 F.Supp. 263 (D.C. Del. 1970); DeGenna v. Grasso, 413 F.Supp. 427 (D.C. Conn. 1976), affirmed, Carino v. Grasso, 426 U.S. 913 (1976).

In short, the authentication required by 18 U.S.C. § 3182 is the only authenti-

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Parte Riccardi, 203 P.2d 627 (Ariz. 1949); State ex rel Cutshaw v. Smith, 127 N.E.2d 633 (Ohio App. 1953); In Re Sanders, 31 N.E.2d 246 (Ohio App. 1937), all of which hold various parts of the Uniform Criminal Extradition Act, which are not also requirements of federal law, inapplicable in extradition proceedings.

cation necessary. Roberts v. Reilly, supra; Price v. Pitchess, 556 F.2d 926 (9th Cir. 1977), reh. den., 434 U.S. 1041; Lee Won Sing v. Cottone, 123 F.2d 169 (D.C.Cir. 1941); United States ex rel McCline v. Meyerling, 75 F.2d 716 (7th Cir. 1935); Chung Kin Tow v. Flynn, 218 F. 64 (1st Cir. 1914); Tiberg v. Warren, 192 F. 458 (9th Cir. 1911). The federal statutes require only that the indictment or affidavit be certified as authentic by the governor or the chief magistrate of the demanding state. The Uniform Criminal Extradition Act requires that the indictment, information, affidavit, judgment of conviction or sentence be authenticated by the executive authority making the demand. It is well settled and it has always been held that the authentication by the governor of the demanding state is sufficient and that additional authentication is not required

under the federal statute or the Uniform Act. Many states have recognized this fact and their courts have held accordingly. Clark v. Leach, 612 P.2d 1130 (Colo. 1980); Wise v. State, 251 N.W.2d 373 (Neb. 1977); Baker v. Smith, 212 S.E.2d 819 (Ga. 1975); State ex rel Clayton v. Wolke, 230 N.W.2d 869 (Wisc. 1975); People v. Jackson, 502 P.2d 1106 (Colo. 1972); Birmingham v. Larson, 490 P.2d 893 (Utah 1971); People ex rel Carr v. Murray, 192 N.E. 198 (Ill. 1934); Perry v. Brown, 552 P.2d 577 (Or.Ct.App. 1976); People ex rel Moree v. Waldron, 383 NYS 2d 430 (N.Y.App.Div. 1976); Ex Parte Posey, 453 S.W.2d 833 (Tex.Cr.App. 1976); Ex Parte Sawyers, 409 S.W.2d 424 (Tex.Cr.App. 1966). Also see Montague v. Smedley, 557 P.2d 774 (Alaska 1976); McEwen v. State, 224 So.2d 206 (Miss. 1969); Mays v. Shields, 444 P.2d 949 (Or. 1968); State v. Commisso, 39 So.2d 729

(La. 1949); Wilson v. Turner, 208 P.2d 846 (Kan. 1949); People v. O'Brien, 26 N.E.2d 488 (Ill. 1940), cert. discharged, 311 U.S. 720; and Morrison v. Dwyer, 121 N.W. 1064 (Iowa 1909). The state courts have held that a certification of authenticity by the governor of the demanding state establishes the validity of the documents[4] and that a governor's general authentication covers all the documents included in the requisition request.[5] Consistent with the

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[4] See In Re Ierardi, 321 N.E.2d 921 (Mass. 1975); Sollinger v. McNeel, 656 P.2d 701 (Colo. 1983); Feast v. State, 668 S.W.2d 810 (Tex.Ct.App. 1984); Ex Parte Terranova, 341 S.W.2d 660 (Tex.Crim.App. 1960); Levine v. Warden of Women's Prison, 64 N.Y.S.2d 337 (N.Y.Sup.Ct. 1946); and Ex Parte Barnett, 190 S.W.2d 361 (Tex.Cr.App. 1945).

[5] See Butcher v. Caldwell, 677 P.2d 342 (Colo. 1984); Vigil v. Martinez, 661 P.2d 1164 (Colo. 1983); Blackwell v. Johnson, 647 P.2d 237 (Colo. 1982); Keefer v. Leach, 597 P.2d 203 (Colo. 1979); Hall v. Cronin, 585 P.2d 286 (Colo. 1986); Smith v. Hegelmore, 369 A.2d 218 (N.H. 1977); Com ex rel Meshel v. Gedney, 384 A.2d 1340

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dictates of this Court in Kentucky v. Dennison, supra, state courts have recognized that the authenticity of extradition papers is a question for the governor of the demanding state and his certificate to that fact is conclusive, absent any evidence that the documents are spurious. Griffith v. Nelson, 647 P.2d 228 (Colo. 1982); Furman v. Miller, 598 P.2d 1042 (Colo. 1979); Byers v. Leach, 530 P.2d 1276 (Colo. 1975); Ex Parte Riccardi, 203 P.2d 627 (Ariz. 1949); also see Rush v. Baker, 533 P.2d 36 (Colo. 1975); Ex Parte Paulson , 124 P.2d 297 (Oregon 1942). At least two state courts have explained that extradition documents need only be authenticated by the governor, and need not be authenticated in accordance with the Act

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(Pa.Super.Ct. 1978); Ex Parte Reagan, 549 S.W.2d 204 (Tex.Cr.App. 1977); Ex Parte Bradley, 456 S.W.2d 370 (Tex.Cr.App. 1970).

of Congress governing certification of judicial orders, judgments and decrees, since extradition documents are not such judicial orders, judgments and decrees and since the Uniform Act provides its own procedure for the internal process in demanding states. Wilson v. Turner, 208 P.2d 846 (Kan. 1949); People ex rel Carr v. Murray, 192 N.E. 198 (Ill. 1934). In other words, the degree or form of authentication required by the governor of the demanding state in deciding whether to make a demand is solely internal to that state and is governed by that state's version of the Uniform Act. When that demand is presented to the governor of the asylum state, the certificate of authenticity made by the governor of the demanding state is conclusive and the asylum state governor and asylum state courts cannot go behind or beyond such certificate of authenticity.

The asylum state courts considering petitions for writs of habeas corpus should not be concerned with the internal application procedures of the demanding state.

It is clear that any type of authentication other than what is required by the federal statute is insufficient and will not authorize extradition. Cf, People v. Evans, 467 N.E.2d 631 (Ill. App. 1984) [requirement of authentication by the executive authority making the demand is not met by certifications of authenticity from the secretary of state, district judge, or clerk of court.] The governor of the demanding state is the person having authority to certify to the authenticity of documents required for extradition.

The decision below (based upon the earlier decision in Wheaton v. State) requires more of a demanding state than is

required by 18 U.S.C. § 3182; if states were to apply different requirements for the extradition of fugitives, then the federal statute and the Extradition Clause would be frustrated and meaningless. Uniformity among the states is essential in order to facilitate the purpose of the Extradition Clause--to enable states to bring offenders to trial as swiftly as possible in the state where the offense was committed. The purpose of the Clause was to preclude any state from becoming a sanctuary for fugitives from another state and thus "balkanize" the administration of criminal justice among the several states.

The court below failed to realize that the paramount interests underlying the extradition process are matters of federal, rather than merely local, concern. Moreover, the judicial branch should not interfere with a governor's grant of

extradition unless the governor's action is so palpably and conclusively shown to be wrong as to warrant an inference of fraud or inadvertence. Here, the Governor of Florida was entitled to rely upon the Governor of Louisiana's certificate of authenticity as to the documents supporting the demand.

This Court should accept jurisdiction and grant certiorari on this issue in order to restore and reaffirm the means by which the purpose of the Extradition Clause is effectuated--summary and executive proceedings by which states are enabled to swiftly bring to trial offenders against their laws.

CONCLUSION

Petitioner has attempted to emphasize the escalating importance of expeditious extradition among the states as being vital to the efficient administration of the criminal justice system. Unwarranted delays in extradition can result in additional crime sprees by fugitives and additional expenses to local governments and law enforcement. For a state court to judicially impose an extra, technical requirement on demanding states, such as the one imposed below, is totally subversive to the original intent of the framers.

This Court should accept jurisdiction and clarify the federal-state relationship regarding extradition; an opinion on the authentication issue could conceivably have a tremendous impact on the expediency of the extradition process and thus the

administration of criminal jsutice across the nation. On the basis of the facts and law presented above, and the policy considerations mentioned, Petitioner submits that the instant Petition for Writ of Certiorari should be granted.

Respectfully submitted:

JIM SMITH
ATTORNEY GENERAL

ANDREA SMITH HILLYER
ASSISTANT ATTORNEY
GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA

(904) 488-0600

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was forwarded by U.S. Mail to Marti Rothenberg, Assistant Public Defender, 1351 Northwest 12th Street, Miami, Florida, 33125, on this _____ day of June, 1986.

Andrea Smith Hillyer

ANDREA SMITH HILLYER
Assistant Attorney General

COUNSEL FOR PETITIONER

APPENDIX

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IN THE DISTRICT COURT
OF APPEAL OF FLORIDA
THIRD DISTRICT
JANUARY TERM, 1986

KEVIN KANE,
Appellant,
v. CASE NO.: 85-2384
THE STATE OF FLORIDA,
Appellee.

Opinion filed February 4, 1986

An Appeal from the Circuit Court for Dade County, Margarita Esquiroz, Judge.

Bennett H. Brummer, Public Defender and Marti Rothenberg, Assistant Public Defender, for appellant.

Jim Smith, Attorney General and Andrea Smith Hillyer, Assistant Attorney General (Tallahassee), for appellee.

Before NESBITT, BASKIN and DANIEL S. PEARSON, JJ.

PER CURIAM.

The order denying Kane's petition for habeas corpus and remanding him to the State of Louisiana upon that state's demand

that Kane be extradited is reversed upon the indistinguishable and controlling authority of Wheaton v. State, 420 So.2d 604 (Fla. 3d DCA 1982), rev. denied, 426 So.2d 28 (Fla. 1983). See also Herrera v. State, 420 So.2d 606 (Fla. 3d DCA 1982), rev. denied, 429 So.2d 7 (Fla. 1983). Although the extradition papers of the demanding state are hardly a model of clarity, we reject Kane's remaining arguments that the Louisiana information fails to substantially charge Kane with a crime under Louisiana law and that the supporting affidavit fails to set forth sufficient facts to establish probable cause.

Reversed.

KEVIN KANE,

Appellant,

v.

THE STATE OF FLORIDA,

Appellee.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1986
WEDNESDAY, MARCH 5, 1986

CASE NO.: 85-2384

Upon consideration, appellant's motion to strike State's motion for rehearing and rehearing En Banc is denied. Appellee's motion for rehearing and request for certification is denied.

A True Copy

ATTEST:

LOUIS J. SPALLONE

Clerk, District Court of Appeal, Third District

By_____
Deputy Clerk

cc: Andrea Smith Hillyer
Marti Rothenberg

/hb

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA, IN AND FOR DADE
COUNTY

CASE NUMBER: 85-19242

KEVIN KANE,

JUDGE ESQUIROZ

Petitioner,

v.

ORDER OF REMAND

FRED CRAWFORD,
DIRECTOR, DADE COUNTY
DEPARTMENT OF CORREC
TIONS AND REHABILITATION
AND/OR STATE OF FLORIDA,

Respondent.

_____/

THIS MATTER having come on to be heard on Kevin Kane's Petition for Habeas Corpus pursuant to 941.10 Florida Statutes, this Court finds,

That the documents were duly authenticated, and that petitioner failed to show that he had not been substantially charged with a crime.
CONSIDERED, ORDERED AND ADJUDGED that:
Said Petition is hereby DENIED.

It is further ORDERED that Kevin Kane

shall remain in the custody of the Respondent pending arrival of proper representatives of the State of Louisiana, at which time the Petitioner shall be surrendered to the custody of said Louisiana authorities for the purpose of transportation to the State of Louisiana to answer criminal charges therein pending.

The petitioner shall remain in the Dade County Jail until further order of this Court.

DONE AND ORDERED this the 17th day of October, 1985, at Dade County, Florida.

MARGARITA ESQUIROZ
JUDGE OF THE ELEVENTH
JUDICIAL CIRCUIT OF
FLORIDA

Scott Kevin WHEATON, APPELLANT,

v.

The STATE of Florida, Appellee.

No. 81-1907.

District Court of Appeal of Florida,
Third District.

July 27, 1982.

Rehearing Denied Sept. 15, 1982.

Petitioner sought writ of habeas corpus claiming that extradition was improper. The Circuit Court, Dade County, James Jorgenson, J., denied petition, and petitioner appealed. The District Court of Appeal, Daniel S. Pearson, J., held that recitation in requisition warrant that Governor of Virginia certified December 1980 indictment to be authentic would not serve to authenticate an otherwise unauthenticated indictment.

Reversed and remanded.

Extradition and Detainers Key 34

Recitation in requisition warrant that Governor of Virginia certified December1980 indictment to be authentic would not serve to authenticate an otherwise unauthenticated indictment. West's F.S.A. §§ 941.03, 941.06.

Roy E. Black and Frank C. Furci, Miami, for appellant.

Jim Smith, Atty. Gen., and Steven R. Jacob, Asst. Atty. Gen., for appellee.

Before HENDRY and DANIEL S. PEARSON, JJ., and WOODROW M. MELVIN (Ret.), Associate Judge.

DANIEL S. PEARSON, JUDGE.

The facts are not in dispute. Scott Wheaton was indicted by a Commonwealth of Virginia grand jury on November 10, 1980, for conspiracy to sell, distribute and possess controlled substances. The Governor of Virginia requested that Wheaton be extradited from Florida. The requisition

warrant stated, **inter alia**, that Wheaton was present in Virginia at the time of the commission of the crime, thereafter became a fugitive from justice, and took refuge in Florida. The Governor of Florida denied extradition apparently because the supporting documents showed that Wheaton was not present in Virginia at the time of the commission of the crime charged and was not therefore subject to extradition under Section 941.03, Florida Statutes (1979), under which the request was made.[1]

In December 1980, the same Virginia grand jury returned a superseding indictment against Wheaton. The new indictment charged the same conspiracy,

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[1] Under Section 941.03, it must be shown "that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state . . . ."

expanded the time covered by the conspiracy, and set forth the offense in greater detail. On January 15, 1981, the Governor of Virginia again demanded the extradition of Wheaton, but under Section 941.06, Florida Statute (1979).[2] The new requisition warrant began:

> Whereas, it appears by application, indictment, etc. which are hereunto annexed and which I certify to be authentic and duly authenticated in accordance with the laws of this State . . . .

Annexed to this request was the December 1980 indictment, to which was attached a clerk's authentication, not of the December 1980 indictment, but of the earlier indictment.

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[2] Under Section 941.06, it must be shown that the accused committed an act in a state other than the demanding state intentionally resulting in a crime in the demanding state even though the accused was not present therein when the crime was committed and did not flee therefrom.

Section 941.03, Florida Statutes (1979), provides in pertinent part:

> "No demand for the extradition of a person charged with a crime in another state shall be recognized by the Governor unless in writing **and accompanied by an authenticated copy of an indictment found . . .in the state having jurisdiction of the crime** . . . [T]he copy of indictment . . . must be authenticated by the executive authority making the demand." (Emphasis supplied.)

The State argues that the recitation in the requisition warrant that the Governor of Virginia certifies the December 1980 indictment to be authentic completely satisfies the statute's authentication requirement. While we agree that without the Governor's authentication, extradition could not be upheld, **Sullivan v. State ex rel. Pardew**, 49 So.2d 800 (Fla. 1951); **State ex rel. Gandert v. Roberts**, 381 So.2d 1191 (Fla. 2d DCA 1980); **Palmer v. State**,312 So.2d 476 (Fla. 4th DCA 1975),

the issue here is whether the prima facie case for extradition which the Governor's authentication arguably establishes is overcome by the fact that a supporting document, that is, the clerk's authentication, indisputably shows that the December 1980 indictment upon which the requisition warrant depends was not, as the Governor also alleged, "duly authenticated."

In our view, the Governor of Virginia's statement that the documents are authentic, while functioning as the ultimate authentication, does not serve to authenticate an otherwise unauthenticated indictment. The requirement of Section 941.03 that the Governor's demand be accompanied by an **authenticated** copy of an indictment is not contained in the Uniform Criminal Extradition Act, **see** Unif. Extradition Act § 3, 11 U.L.A. 35 (1974), upon which Chapter 941 is otherwise

patterned.[3] It is well settled that a statute must be read, if possible, so as to give meaning to all its parts, **State v. Rodriguez**, 365 So.2d 157 (Fla. 1978); **Wilensky v. Fields**, 267 So.2d 1 (Fla. 1972); **Piantadosi v. State**, 399 So.2d 382 (Fla. 3d DCA 1981). A fortiori, where the statute adds a provision not found in an act upon which it is patterned, we must presume that the Legislature intended the added words to have meaning. Thus, we read the requirement that the accompanying copy

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[3] It appears that only Maine and Florida have added the requirement that the demand be accompanied by an authenticated copy of the indictment. The pertinent provision of the Uniform Act reads:

> "No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing . . . and accompanied by a copy of an indictment found . . . in the state having jurisdiction of the crime . . . ."

of the indictment be authenticated as contemplating a separate authentication by the appropriate person in charge of the records of the court wherein the grand jury sat and the indictment was returned. Were the Governor's blanket statement of authenticity enough, then there would be little need to have an **authenticated** copy of the indictment accompany his request, and this separate provision would have no meaning at all.[4]

We fully recognize that the role of a court in a habeas corpus proceeding challenging the issuance of a rendition warrant is limited. Nonetheless, as limited as our role is, it includes our

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[4] The trial court's order relied on **Kurtz v. State**, 22 Fla. 36 (1886), which was decided under a federal statute which, like the uniform law, contained no separate requirement that a copy of the indictment be authenticated.

right to determine whether the extradition documents on their face are in order. **Fauls v. Sheriff of Leon County,** 394 So.2d 117 (Fla. 1981); **Moore v. State,** 407 So.2d 991 (Fla. 3d DCA 1981).

Here the document which purported to authenticate the December 1980 indictment under which extradition was requested in fact authenticated an earlier indictment as to which an extradition request had been refused. Thus, the extradition papers are quite clearly deficient, **see Battles v. State,** 389 So.2d 957 (Ala.Cr.App.1980), and the deficiency is hardly technical:

> "The statute is one involving the substantial rights of citizens, and its essential elements must be strictly followed. . . . Only by faithfully following the provisions of this statute may a person be lawfully deprived of his liberty and extradited from an asylum state to another state, there to be tried for the commission of a crime. The alleged fugitive has a right not

> to be imprisoned or dealt with by the states in disregard to those safeguards provided by the Constitution and statutes of the United States." **United States ex rel. Mcline v. Meyerling,** 75 F.2d 716,717 (7th Cir. 1934) (citations omitted).

We have considered Wheaton's other points on appeal and find them to be without merit. However, for the reasons stated, the trial court's order denying Wheaton's petition for writ of habeas corpus and remanding the petitioner to custody for return to Virginia is reversed and the cause remanded to the trial court for further proceedings consistent herewith.

Miguel Angel HERRERA, Appellant,

v.

The STATE of Florida, Appellee.

No. 81-1901.

District Court of Appeal of Florida,
Third District.

Aug. 31, 1982

Rehearing Denied Oct. 20, 1982.

Appeal from Circuit Court, Dade County; James R. Jorgenson, Judge.

High, Stack, Lazenby, Bender, Palahach & Lacasa and R. Scott Boundy and Marco Laffredo, for appellant.

Jim Smith, Atty..Gen., and Diane Zimmer Leads, Asst.Atty.Gen., for appellee.

Before DANIEL S. PEARSON and FERGUSON, JJ., and WILLIAM C. OWEN, Jr. (Ret.), Associate Judge.

PER CURIAM.

For the reasons set forth and upon the authorities cited in the companion case of **Wheaton v. State**, 420 So.2d 604 (Fla. 3d DCA 1982), the trial court's order

denying Herrera's petition for writ of habeas corpus and remanding the petitioner to custody for return to Virginia is reversed and the cause remanded to the trial court for further proceedings.

SUPREME COURT OF FLORIDA

THURSDAY, FEBRUARY 10, 1983

STATE OF FLORIDA,
Petitioner,
v.
SCOTT KEVIN WHEATON,
Respondent.

DISTRICT COURT OF APPEAL, THIRD DISTRICT
NO. 81-1907

CASE NO. 67,716

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla.R.App.P. 9.330(d).

ADKINS, Acting C.J., BOYD, OVERTON, McDONALD and ERLICH, JJ., concur

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

TC
cc: Hon. Louis J. Spallone, Clerk
Hon. James R. Jorgenson, Judge
Hon. Richard R. Brinker, Clerk
Steven R. Jacob, Esquire
Roy E. Black, Esquire

SUPREME COURT OF FLORIDA

FRIDAY, MARCH 25, 1983

CASE NO. 62,856
DISTRICT COURT OF
APPEAL, 3D DISTRICT
NO. 81-1901

STATE OF FLORIDA,

Petitioner,

v.

MIGUEL ANGEL HERRERA,

Respondent.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No motion for Rehearing will be entertained by the Court. See Fla.R.App.P. 9.330(d).

BOYD, Acting C.J., OVERTON, MCDONALD, EHRLICH, and SHAW, JJ., concur.

A True Copy TC

TEST:

Sid J. White
Clerk Supreme Court

by:
Deputy Clerk

cc: Hon. Louis J. Spallone, Clerk
Hon. James R. Jorgenson, Judge
Hon. Richard P. Brinker, Clerk
Diane Z. Leeds, Esquire,
Roy E. Black, Esquire
Frank C. Furci, Esquire
G. Kirk Haas, Esquire
R. Scott Boundy, Esquire

STATE OF LOUISIANA

EXECUTIVE DEPARTMENT

The Governor Of The State Of Louisiana

To His Excellency The Governor Of The State Of Florida

Whereas, it appears by the annexed application for requisition and copies of **Bill of Information, Affidavit, Warrant and Identification** which I certify are authentic and duly authenticated in accordance with the laws of the State of Louisiana, that under the laws of this State **KEVIN KANE** stands charged with the crime of **Attempted Aggravated Rape** committed in this State, and it has been represented and is satisfactorily shown to me that the accused was present in this

State at the time of the commission of said crime and thereafter fled from the justice of this State, and has taken refuge and is now to be found in the County of **Dade**, State of **Florida**.

Now, Therefore, pursuant to the provisions of the Constitution and laws of the United States and the laws of the State of Louisiana and the laws of the State of **Florida**, in such case made and provided,

I Do Hereby Respectfully Demand that said **KEVIN KANE**, fugitive from justice be arrested and secured and delivered to **Charlton P. Rozands and Aubrey Authement** who is hereby authorized to receive, convey and transport him to this State, here to be dealt with according to law.

In Witness Whereof, I have

hereunto signed my name and caused to be affixed the Great Seal of State, at Baton Rouge, Louisiana, this 6th day of September, A.D., 1985.

_____

Governor

By the Governor:

_____

Secretary of State